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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,296	12/02/2003	Frank Michael Kraft	15609-013001 / 2003P00436	5242

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FISH & RICHARDSON, P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER	
NGUYEN, VAN H	
ART UNIT	**PAPER NUMBER**
2194	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/726,296	KRAFT ET AL.	
	Examiner	Art Unit	
	VAN H. NGUYEN	2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 7/27/04, 8/24/04, 4/5/05, 5/18/05 & 2/24/06
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to the application filed 12/02/2003.

Claims 1-20 are presented for examination.

Oath/Declaration

2. The Office acknowledges receipt of a properly signed Oath/Declaration received 12/02/2003.

Information Disclosure Statement

3. The Applicant's Information Disclosure Statements, filed 07/27/2004, 08/24/2004, 04/05/2005, 05/18/2005, and 02/24/2006, have been received, entered into the record, and considered.

Specification

4. Examiner requests that Applicant review the application carefully for informalities including typographical errors.

It is noted that applicant has other related application (e. g., 10/726, 295 filed on 12/02/2003). It is requested that any related application be referred to in the first sentence of the specification. Applicant is also requested to supply the serial numbers of any other related applications currently pending before the U.S Patent & Trademark Office.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are not limited to storage embodiments (see claims 14-20 and the Specification page 3, lines 11-12). In that event, the claims are directed to a form of energy which at present the office feels does not fall into a category of invention. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>

To overcome this type of 101 rejection the claims need to be amended to include only the physical computer media and not a transmission media or non-functional media. For the specification at the bottom, carrier medium and transmission media would be not statutory but storage media would be statutory.

Claims which are broad enough to read on statutory subject matter or on non-statutory subject matter are considered non-statutory. Cf. In re Lintner, 458 F.2d 1013, 1015, 173 USPQ 560, 562 (CCPA 1972) ("Claims which are broad enough to read on obvious subject matter are unpatentable even though they also read on nonobvious subject matter.") During prosecution, applicant can amend to limit the claims to statutory subject matter.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-65 of copending Application No. 10/726, 295. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the applications are directed to the same method for updating data in a multiple-system network. The claimed differences would be obvious to a programmer of ordinary skill.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by **Saether et al.** (US 6405219).

As to claim 8:

Saether discloses a method of updating a locally stored version of a data set, wherein multiple application systems each maintain a separate stored version of the data set and are each capable of modifying an attribute of the data set, wherein the attribute comprises multiple attribute components that are each associated with a different one of the multiple application systems, and wherein each attribute component has a data value and a change value *(updating a version of a set of source files stored on a content server over a network, ... employing the configuration of each content server to copy the current version of each source file that is included in the set of source files on the global server to a directory created on each content server, whereby the version of the set of source files stored on each content server is updated by renaming the current version of each source file copied to the directory on each content server... when another global server is added to the network, creating a copy of the versioned file tree repository for the set of source files. The versioned file tree repository for the set of source files is replicated on the other global server which employs the set of source files included in the versioned file tree repository to update the version of the set of source files stored on each content server that is local to the other global server. The type of the other global server may be primary or secondary; see the Abstract and col.1, line 50-col. 3, line 58),* the method comprising:

modifying an attribute of a data set stored locally in a first application system *(a particular set of source files for each content server is automatically updated according to the directory structure and hardware configuration of each content server; col.4, line 27-40);*

generating a message containing the modified data set as locally stored in the first application system, the data set comprising multiple attribute components that are each associated with a different one of the multiple application systems; and sending the message to a second application system that maintains a version of the data set (*The Primary global server generates a version delivery list for each Secondary global server that indicates a particular update version for each local content server. The version delivery list also includes the file directory structure and the hardware constraints of each local content server. The Primary global server also generates a version change container for each Secondary global server based on its path and the difference between the updated version of the set of source files stored in a versioned file tree repository on the Primary global server and the current version of the set of source files stored in a another versioned file tree repository on each Secondary global server. ...The Primary global server and each Secondary global server generate a current version of the set of new and/or changed source files and files to be removed for each local content server based on the update version identified in the version delivery list. Additionally, when a user indicates that a current version of the set of source files on the local content servers*

should be rolled back to a previous version, the Primary global server creates a "rollback" version delivery list that is provided to each Secondary global server. A Secondary global server employs the previous version indicated in the rollback version delivery list to generate the previous version of the set of source files necessary to restore the previous version of the set of source files. These source files are copied to a temporary sub-directory on each local content server. Similarly, the Primary global server generates the previous version of the set of source files and copies these files to a temporary sub-directory on each local content server; col.4, line 57-col.5, line 63; see also, col.6, lines 23-50).

As to claim 9:

Saether discloses the change value of the attribute component is a timestamp *(time stamp)* that indicates the time of the modification to the attribute component's data value *(col.4, lines 41-56 and col.8, lines 7-27).*

As to claim 10:

Saether discloses the change value of the attribute component is a version number *(name)* that is incremented after each modification to the attribute component's data value *(col.4, lines 41-56 and col.8, lines 7-27).*

As to claim 11:

Saether discloses the first application system uses asynchronous message *(message)* transfer to send the message to the second application system *(col.1, line 50-col. 3, line 58).*

As to claim 12

Saether discloses the first application system sends a message *(message)* to the second application system containing the first application system's data set after each modification of an attribute component of the first application system's data set *(col.1, line 50-col. 3, line 58; col.8, lines 42-48; col.9, lines 1-7; and col.9, lines 43-48).*

As to claim 13:

Saether discloses a total value a total value that represents a sum of the attribute component data values in the data set as locally stored in the first application system *(col.4, lines 41-56 and col.8, lines 7-27).*

As to claim 1:

The rejection of claim 8 above is incorporated herein full. Saether further teaches discloses receiving, from a first application system of the multiple application systems and at a second application system of the multiple application systems, a message containing a data set as locally stored in the first application system; and for each

attribute component of the received data set *(managing the distribution and synchronization of a set of updated content and application (source) files for remotely located heterogeneous content servers with reduced impact on a network's bandwidth. A particular set of source files for each content server is automatically updated according to the directory structure and hardware configuration of each content server.... a Primary global server that is in communication with local source servers and local content servers. Also, the Primary global server may be used with at least one geographically separate Secondary global server that is in communication with other content servers that are local to the Secondary global server. ..The Primary global server 102 distributes containers to Secondary global servers 108A and 108B across the Internet 101. The Secondary global servers 108A and 108B form part of geographically separate data centers 109 and 111. The Secondary global servers 108A and 108B are shown coupled through optional firewall servers 106B and 106C, respectively, to the Internet 101. Each of the Secondary global servers 108A and 108B are in communication with one of more local content servers 104B and 104C, respectively. As a result, the Secondary global servers 108A and 108B can provide a current version of a set of source files to their associated local content servers 104B and 104C. Each geographically separate data center 109 and 111 also includes a server array controller 105B and 105C to manage access to the content and applications on the local content servers 104B and 104C; col.6, lines 27-56 and col.6, lines 23-41)* comparing the attribute component's change value as stored locally in the second application system with the attribute component's change value as contained in the received data set, and if the comparison

indicates that the version of the attribute component's data value as stored locally in the second application system is less recent than the version of the attribute component's data value contained in the received data set, replacing the attribute component's data value stored locally in the second application system with the attribute component's data value contained in the received data set *(The Primary global server and each Secondary global server generate a current version of the set of new and/or changed source files and files to be removed for each local content server based on the update version identified in the version delivery list. The Primary and Secondary global server generate a content change container that includes the current version of the set of new and/or changed source files and indicates which source files are to be removed on each local content server. Employing the contents of the content change container, each Secondary global server will make the update version changes as indicated in the version delivery list by copying the update version of the set of new and/or changed source files to temporary sub-directories on each of their associated local content servers. Similarly, the Primary global server will copy the update version of the set of new and/or changed source files to temporary sub-directories on each of its associated local content servers. The Primary and Secondary global servers change the version of the set of source files on the local content servers by renaming the update version of the set of source files copied to the temporary sub-directories...the Primary global server examines the source (content and application) files on each source server and identifies each new and/or modified source file by comparing the name, time stamp and size of each source file on each source server to the current version of each source file stored on the Primary global server in a*

versioned file tree. When a source file with the same name exists on both a source server and the Primary global server, the present invention identifies the most current version by comparing their sizes and time stamps. If the sizes of the source files with the same name are different or the time stamp of the source file on the source server is different than the time stamp of the Primary global server's source file, the source server's source file is identified as the most current version. Further, when another source file with the same name is not on the Primary global server, the source file on the source server is identified as the current version. Also, when a named source file only exists on a Primary global server, this source file is not identified as a member of the current version of the set of source files; col.5, lines 9-29 and col.8, lines 7-41).

As to claims 2-4:

Refer to the discussions of claims 9, 10, and 12, respectively, for rejections.

As to claims 5 and 6:

Refer to the discussions of claims 11 and 13, respectively, for rejections.

As to claim 7:

Saether discloses the message received by the second application system from the first application system includes the attribute components associated with the second application system *(col.1, line 50-col. 3, line 58; col.8, lines 42-48; col.9, lines 1-7; and*

col.9, lines 43-48).

As to claim 14:

Refer to the discussion of claim 1 above for rejection.

As to claims 15-17:

Refer to the discussions of claims 9, 10, and 12, respectively, for rejections.

As to claims 18 and 19:

Refer to the discussions of claims 11 and 13, respectively, for rejections.

As to claim 20:

Refer to the discussion of claim 7 above for rejection.

Conclusion

8. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

Contact Information

9. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 7:30AM 5:00PM. The examiner can also be reached on alternative Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM THOMSON can be reached at (571) 272-3718.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:
Commissioner for patents
P O Box 1450
Alexandria, VA 22313-1450

Van H. Nguyen
Patent Examiner, AU 2194